

REPRESENTATIVE FOR PETITIONER:

Donald Wanjiku, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Terrance Wozniak, St. Joseph County Deputy Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

DONALD WANJIKU, ¹	)	Petition No.:	71-026-04-1-5-01264
)		
Petitioner,	)	Parcel:	18-5100-3547
)		
v.)		
	)	County:	St. Joseph
PORTAGE TOWNSHIP	)	Township:	Portage
ASSESSOR, ST. JOSEPH)		
COUNTY ASSESSOR)		
	)	Assessment Year:	2004
Respondents ²)		

Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals

December 19, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

¹ In his Form 131 petition, Mr. Wanjiku named J. May as the property owner. Before the hearing, Mr. Wanjiku indicated that he wished to proceed in his own name and that he had paid the property taxes on the subject property. At the hearing, Mr. Wanjiku testified that, although he did not buy the subject property until 2005, he actually paid the property taxes for the March 1, 2004 assessment. *See Wanjiku testimony.*

² The St. Joseph County Assessor appeared as an additional party under Ind. Code § 6-1.1-15-4(p) (2006). For ease of reference, the Board has captioned County Assessor as a Respondent. The County Assessor did not appear at the hearing or present testimony.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE AND SHORT ANSWER

1. The Petitioner submitted an appraisal to support his contention that his property is overvalued. The dispositive issue in this case is whether that appraisal was sufficient to rebut the presumption that the assessment is correct.
2. It was not. The appraisal estimated the subject property's value as of November 29, 2004. The Petitioner, however, did not explain how the appraiser's estimate related to the subject property's market value-in-use as of the relevant January 1, 1999 valuation date.

PROCEDURAL HISTORY

3. On June 8, 2005, the Petitioner filed his appeal with the Respondent. On May 25, 2006, the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination upholding the subject property's assessment. The Petitioner disagreed with the PTABOA's determination, and on June 6, 2006, filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment. The Board has jurisdiction over the Petitioner's appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. On September 26, 2006, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus ("ALJ"). Neither the Board nor the ALJ inspected the subject property.
5. Terrance Wozniak appeared as counsel for the Respondent. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Donald Wanjiku, Taxpayer

For the Respondent:

Rosemary Mandrici, Portage Township Assessor
Kevin Klaybor, St. Joseph County PTABOA
Dennis Dillman, St. Joseph County PTABOA
Ross Portolese, St. Joseph County PTABOA
Ralph Wolfe, St. Joseph County PTABOA

6. The Petitioner submitted the following exhibits:
 - Petitioner Exhibit 1: Appraisal of the subject property.

7. The Respondent submitted the following exhibits:
 - Respondent Exhibit 1: Form 131 Petition,
 - Respondent Exhibit 2: Form 130 Petition,
 - Respondent Exhibit 3: Form 115 Final Determination,
 - Respondent Exhibit 4: Record of hearing,
 - Respondent Exhibit 5: Sign-in sheet from PTABOA hearing,
 - Respondent Exhibit 6: Portage Township worksheets,
 - Respondent Exhibit 7: Power of Attorney,
 - Respondent Exhibit 8: Photographs of subject property,
 - Respondent Exhibit 9: Appraisal presented at PTABOA hearing,
 - Respondent Exhibit 10: Subject property record card,
 - Respondent Exhibit 11: Sales,
 - Respondent Exhibit 12: Petitioner's Quit Claim Deed,
 - Respondent Exhibit 13: Sales Disclosure for subject property,
 - Respondent Exhibit 14: Sales Disclosures for comparable properties.

8. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A – The Form 131 petition,
 - Board Exhibit B – Notice of hearing dated August 14, 2007,
 - Board Exhibit C – Notice of Appearance, Terrance Wozniak
 - Board Exhibit D – Notice of Appearance, County Assessor,
 - Board Exhibit E – Hearing sign-in sheet.

9. The subject is a residential property, located at 1106 Burns Street, South Bend, Indiana.

10. The PTABOA determined that the subject property's assessed value is \$6,700 for the land and \$20,400 for the improvements for a total assessment of \$27,100.

11. The Petitioner requests a value of \$2,000 for the land and \$6,000 for the improvements for a total assessment of \$8,000.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
14. If the taxpayer establishes a prima facie case, the burden shifts to the assessing official to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

OBJECTION

15. At the hearing, the Petitioner objected to the Respondent's Exhibit 14. The Petitioner argued that the sales disclosures contained in that exhibit list only sales prices without referencing the properties' respective sizes or physical conditions. The Board understands this to be a relevancy objection.
16. The Board may exclude irrelevant evidence. *See Ind. Admin. Code tit. 52, r. 2-7-2(c)*. Evidence is relevant if it has “any tendency to make the existence of any fact that is of

consequence to the determination of the action more probable or less probable than it would be without the evidence.” Ind. Evidence Rule 401. The Respondent attempted to support its assessment by relying on the sales-comparison approach to value. And while not sufficient in themselves, sale prices for comparable properties are a necessary component to that approach. The Board therefore overrules the Petitioner’s objection.

ANALYSIS

Parties Contentions

17. The Petitioner contends that the Respondent assessed his property for more than its market value-in-use. In support of his contention, he submitted an appraisal performed by John M. Williams, a certified appraiser. *Pet’r Ex. 1*. Mr. Williams estimated the subject property’s value at \$8,000 as of November 29, 2004. *Id. at 3*. Mr. Williams had prepared an earlier appraisal also valuing the subject property at \$8,000 as of the same valuation date. The PTABOA, however, rejected that appraisal because it relied on “bank sales.” *Wanjiku testimony*. The Petitioner did not offer the earlier appraisal report into evidence.
18. The Petitioner bought the subject property in 2005. He paid \$4,300 plus an unspecified amount of back taxes, which brought the total sale price to roughly the same amount as Mr. Williams’s appraisal. *Wanjiku testimony; Resp’t Ex. 13*. The Petitioner, however, did not expressly rely on the subject property’s 2005-sale price to support his claim.
19. The Respondent argues that Mr. Williams’s appraisal is unreliable. *Dillman argument*. According to the Respondent, that appraisal alternately refers to the subject house’s condition as “average” and “poor.” And Mr. Dillman testified that Mr. Williams violated the Uniform Standards of Appraisal Practice (“USPAP”) guidelines by appraising the same property for two different clients. The Respondent further contends that sales from the subject property’s neighborhood support the current assessment. *Mandrici testimony; Resp’t Ex. 11*.

Discussion

20. The 2002 Real Property Assessment Manual defines “true tax value” as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

21. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

22. And the taxpayer must explain how its evidence relates to its property’s value as of the relevant valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct. 2005); *see also* MANUAL at 4, 8. For assessment years 2002 – 2005, that valuation date is January 1, 1999. *Id.*; *see also* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates); Ind. Code § 6-1.1-4-4.5 (requiring the DLGF to adopt rules for annually adjusting assessments to account for changes to value in years since general reassessment, with such adjustments beginning in 2006).

23. Here, Mr. Williams estimated the subject property's value as of November 29, 2004. The Petitioner did not explain how Mr. Williams's estimate related to the subject property's market value-in-use as of the relevant January 1, 1999 valuation date. And Mr. Williams's appraisal does not speak to that question. At most, that appraisal indicates that "MLS" statistics showed "moderately increasing prices" in the subject property's area. But it does not reference the period over which those prices had been increasing. And the Petitioner's failure to relate Mr. Williams's November 29, 2004, value estimate to the subject property's value as of January 1, 1999, applies equally to his evidence concerning the subject property's 2005 sale price. The Petitioner therefore failed to make a prima facie case rebutting the presumption that the Respondent correctly assessed the subject property.

SUMMARY OF FINAL DETERMINATION

24. The Petitioner failed to make a prima facie case of error. The Board therefore finds for the Respondent.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>